

When custom order items such as personalized business calling cards and letterheads are sold, Retailers' Occupation Tax does not apply. However, sales of custom order items are subject to Service Occupation Tax liability. See 86 Ill. Adm. Code 130.1995. (This is a GIL.)

April 17, 2006

Dear Xxxxx:

This letter is in response to your letter dated December 3, 2005, in which you request information. We apologize for the delay in responding. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to get some clarification on what type of tax and the rate I may need to charge on some items I will be selling. I have signed on to be a dealer of Cherubs-n-Chocolates personalized candy bar wrappers. I will be ordering wrappers from Cherubs-n-Chocolates and then printing a personalized message on the wrapper. I will then sell the wrapper with the personalization to the customer that requested the personalization. Some of my sales may include a candy bar with the wrapper and some may just be the wrapper, as the customer will purchase their own candy bars. The wrappers are ordered from Cherubs-n-Chocolates, which is out of state, and I don't believe they will be charging me any type of tax since they are out of state. I am guessing I would pay some type of use tax on the wrappers since they are ordered from out of state. If one of my customers wants a candy bar with the wrapper, I will be picking up the candy bars at a local Sam's Club.

Here are a couple of scenarios:

1. Customer wants just 1 personalized wrapper, so I sell it for \$0.60. What tax would need to be charged, if any?

2. Customer wants just 1 personalized wrapper and candy bar which I will place the personalized wrapper around the candy bar for them, so I sell it for \$1.50. What tax would need to be charged?

DEPARTMENT'S RESPONSE

As a general rule, when a product is an item of general utility and serves substantially the same function as a stock or standard item, the product will be subject to Retailers' Occupation Tax liability when sold at retail. See the Department's regulation at 86 Ill. Adm. Code 130.2000. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price. Calendars are typically such items of general utility. Gift tags may also fall into this category.

When custom order items are sold, Retailers' Occupation Tax does not apply. For example, as indicated in 86 Ill. Adm. Code 130.1995(b), personalized business calling cards and letterheads are not subject to Retailers' Occupation Tax when sold. However, sales of custom order items are subject to Service Occupation Tax liability. For your general information, we refer you to 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, 35 ILCS 115/1 et seq., the purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of the tangible personal property being transferred; (2) 50% of the entire bill; (3) Service Occupation Tax on the cost price of the tangible personal property being transferred if they are registered de minimis servicemen; or, (4) Use Tax on the cost price of the tangible personal property being transferred if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See part (f) of the enclosed copy of 86 Ill. Adm. Code 140.101(f). Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. They collect the corresponding Service Use Tax from customers.

The fourth method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service are less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. These servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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